

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

ORDER

Criminal No. 07-049(1) ADM/FLN

Modesto Guzman Tlaseca,

Defendant.

Lisa D. Kirkpatrick, Assistant United States Attorney, Minneapolis, MN, on behalf of Plaintiff.

Modesto Guzman Tlaseca, pro se.

This matter is before the undersigned United States District Judge for a determination of Defendant Modesto Guzman Tlaseca's ("Tlaseca") Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2) and Amendments Set Out in the "First Step Act" of 2018 [Docket No. 174]. Tlaseca requests a reduction of his sentence in light of Section 401 of the First Step Act. Because Section 401 of the First Step Act does not apply retroactively, Tlaseca's Motion is denied.

On June 20, 2007, Tlaseca was found guilty of a conspiracy to distribute methamphetamine involving of 500 grams or more, in violation of 21 U.S.C. §§841(a)(1), 841(b)(1)(A) and 846. See Jury Verdict [Docket No. 116]; Sentencing J. [Docket No. 140]. On December 4, 2007, the Court sentenced Tlaseca to a term of imprisonment of 264 months. Sentencing J. at 2.

On appeal, Tlaseca challenged (1) the denial of his pre-trial motions to suppress evidence and (2) the sufficiency of evidence at trial. United States v. Guzman-Tlaseca, 546 F.3d 571 (8th

Cir. 2008). Tlaseca also challenged the imposition of sentence, including the applicability of a 20-year statutory mandatory minimum sentence as a result of a prior felony drug conviction in Utah and a 2-level guideline enhancement for his managerial role in the offense. Id. On November 17, 2008, the Eighth Circuit affirmed Tlaseca's conviction and sentence [Docket No. 152].

On November 10, 2014, the defendant filed his first pro se motion [Docket No. 161] for a sentence reduction, pursuant to 18 U.S.C. §3582(c)(2). The motion was based on Amendment 782 to the Sentencing Guidelines. Amendment 782 became effective on November 1, 2014, and lowered certain "drug quantity" base offense levels in the Sentencing Guidelines. On April 12, 2016, this Court granted Tlaseca's § 3582(c)(2) motion and reduced his sentence to 240 months [Docket Nos. 169, 170]. Pursuant to 21 U.S.C. § 851, 240 months reflects the mandatory minimum. Id.

On March 4, 2019, Tlaseca filed the present Motion requesting that his sentence be further reduced from 240 months to time served based on his understanding of Section 401 of the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) ("First Step Act"). Tlaseca seeks to have the amendments to the Controlled Substances Act retroactively applied to his sentence. Tlaseca also seeks to have the Court consider 18 U.S.C. § 3553(a) factors for a downward variance of the new Sentencing Guidelines.

The Court construes Tlaseca's pleading liberally, as the defendant is proceeding pro se. Estelle v. Gamble, 429 U.S. 97 (1976). Even when Tlaseca's pleadings are liberally construed, the Court lacks the authority to modify Tlaseca's sentence because Section 401 of the First Step

Act does not apply retroactively. Section 401(c) states: “Applicability to pending cases: This section, and the amendments made by this section, shall apply to any offense that was committed before the enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.” See First Step Act of 2018, Pub. L. No. 115-391, § 401, 132 Stat. 5194, 5221. Tlaseca was sentenced in 2007, well before the First Step Act’s enactment on December 21, 2018. Section 401 of the First Step Act therefore does not apply to Tlaseca and does not entitle him to relief. Additionally, the Court does not consider 18 U.S.C. § 3553(a) factors for a downward variance because Tlaseca’s sentence reflects the statutory mandatory minimum.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant Modesto Guzman Tlaseca’s Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2) and Amendments Set Out in the “First Step Act” of 2018 [Docket No. 174] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: June 26, 2019.